

REPORT

OF THE

HOLDEN SLAVE CASE,

TRIED AT THE

JANUARY TERM OF THE COURT OF COMMON PLEAS,
FOR THE COUNTY OF WORCESTER, A. D. 1839.

Published by the
Board of Directors of the Holden Anti-Slavery Society.

WORCESTER :
PRINTED BY COLTON & HOWLAND.
1839.

INTRODUCTION.

In the present state of our country, every fact, which has a direct or even indirect and remote bearing on the momentous subject of American Slavery, is of some importance. Few, if any of our Northern citizens profess to hold slavery in any other estimation than the profoundest abhorrence ; and yet, it is undeniable that very many either tolerate its existence in silence, or exert but a very inadequate influence for its removal.

Abstract Slavery every one abhors ; but of slavery, as it exists, so little is even yet known that most seem to regard it as mainly a nominal evil, and, therefore, experience very little sympathy with those who are called slaves. To dissipate this darkness and overcome this apathy, the enlightened and active friends of the slave ought to stand ready to seize upon, and skilfully use, such facts as are evolved by the providence of God, adapted to illustrate the necessary operation of the inhuman system.

The following Report exhibits several facts of this class, and we simply allude to them in this brief introduction, in order to turn the reader's attention to them as he examines the testimony in the case. The facts to which particular allusion is made are the following.

The claimant of "the girl Anne" is a native of Worcester County, and so was her husband, who, on going to reside at the South, lost so much of his New England abhorrence of slavery as himself to become a slave-holder. The same is true of Mrs. Eames. We are not to ascribe this lamentable and forbidding fact to any peculiar cruelty of disposition in these persons, or to any stronger love of money than is common among us. It must be ascribed to the natural operation of the *system* of slavery, as it exists interwoven with all the domestic and social relations of the community among whom these persons went to reside.

There are, also, subordinate facts, which are to be accounted for in the same way ; as, for example, the apparent unconcern of Mrs. Eames touching the health of the girl, and her being overtired ; the severity with which punishment for trivial faults, called "crimes," was inflicted ; and the entire neglect of the literary and religious education of Anne, during her stay in Holden.

These facts serve to show how important it is that the youth of New England receive early and full instruction in the true nature of the system of slavery ; and how intimately connected are such citizens of the North as have relatives at the South, with the evils of the system ; and how liable are the Northern citizens to regard Slavery with moderated abhorrence and even with favor. It is well known that numerous persons in New England, among whom are ministers and other professors of the benign religion of Jesus Christ, are, at this moment, so connected with the South ; and that these persons almost uniformly stand aloof from all interference with this foulest of moral evils with which the land is polluted, or even strenuously oppose, as "fanatical and incendiary and mad," every effort made to awaken the people to a consideration of the subject. It was under the conviction that the facts of the present case may contribute to undeceive our citizens on some important topics belonging to the great subject of slavery, that the publishers were prompted to publish the following Report.

And here it may be important to remark, that the Report may be relied on as correct, since it has been compiled from minutes taken at the time by a reporter and those of the Hon. Charles Allen, Counsel for the defendants. Mr. Allen has, by request, furnished the publishers with a succinct statement of the points in evidence which would have been more fully established, if the trial had not been arrested by the District Attorney, when only *two* of twelve or fourteen witnesses on the defence had given their testimony.

The law of personal replevin, being new, and this, as is believed, being the first trial under it, the present Report is deemed of the more importance to the community. Neither should it be supposed by any that this law is limited to the removal of slaves or colored persons from duress. Its powers and applicability extend to every class of the people.

COMPILER.

REPORT.

THE case of Commonwealth *vs.* SAMUEL STRATTON, SAMUEL FOSTER, JAMES E. CHENEY, and FARNUM WHITE, Jun., who were charged in the indictment with a *conspiracy* to defraud OLIVIA EAMES of Holden, of the *voluntary* services of her servant girl, named ANNE, without her consent,—came on in the Court of Common Pleas, in this town, (Worcester) on Tuesday, January 29th, 1839, Judge STRONG presiding. PLINY MERRICK, Esq., District Attorney, conducted the prosecution; and CHARLES ALLEN, Esq., appeared for the defendants.

Mr. Merrick, in opening the case, stated that Mrs. Eames, the party aggrieved, was a native of Worcester County—that she was married to Mr. Eames, also a native of this County, who a few years since removed with her to New Orleans. There he acquired some property, and, among other articles, came in possession of a number of slaves. In 1837, he died; after which, Mrs. Eames sold her property, excepting the girl Anne, then 12 or 13 years of age. She was retained as a house servant and nurse; and accompanied Mrs. Eames in that capacity, on a visit to Mrs. Eames's friends in Grafton and Holden, in Massachusetts.

Of course, as soon as she came into this State, she was as free as any native born citizen of this State, and had the right to remain with or leave her mistress, as she saw fit. The highest tribunal has decided, that, if a person come here on business or pleasure, and bring a slave, the slave becomes free.

In the session of 1837, an important Act was passed by the Legislature of this State.* By that act any person is entitled to the Writ, unless indicted for some offence. He may go to the Clerk and demand it. No power of

* See said Act at the end of this Report.

Attorney is to be required and no express form is necessary. Any person for and in behalf of the plaintiff may sue out this writ.

If Mrs. Eames did imprison her, she might be brought into Court, and she might apply to the Court for security. But the allegation, in the indictment, is, *first*, that Anne was *not* restrained of her liberty *at all*. Anne was there *voluntarily*. She did not suppose that her liberty was infringed. Yet the defendants sued out the writ, while there was no duress. It is alleged that Anne had no knowledge of the writ. This is an offence, and it is the offence charged in the indictment. No persons, claiming to be the friends of Anne, had a right to sue out this writ, without her consent. Still, we must be careful not to infringe on the rights of minors. Few, if any, children of those who are educated, know any thing of the writ of personal replevin, much less, one brought up in bondage. If Anne, in any way intimated a desire, directly or indirectly, that aid in some form should be granted, the defendants are not only excused but justified. If it was done without her knowledge or consent, the defendants are liable, Anne not being in bondage. Undoubtedly, the defendants understood and believed that it was the purpose of Mrs. Eames to carry Anne back to Louisiana, where she would be in bondage. The defendants thought this was wicked, and the dictates of humanity required that they should interfere. But the motive may be good, and yet the laws must not be violated from such motives. Some think the business of distillation is pernicious. Now, suppose a philanthropist should think that a laborer in the distiller's employ was endangering his health and his soul, and should sue out this writ, for the purpose of removing the laborer from the service of the distiller. The motive would be good, but the act would be a violation of the law. So, if a slave should be brought here, and prefer to go back into slavery, we have no right to prevent it. It was so with ANNE. She had a right to return and be a slave. *The offence charged is the conspiracy.* No subsequent ratification by Anne could justify the act of the defendants. If the defendants did design to take Anne and educate and christianize her, if she did not desire it, though she afterwards ratified it and blessed God for their efforts, still the defendants would not be justified. *Instances have occurred in this Commonwealth, where individuals having had their freedom here, and*

having been treated kindly, have voluntarily gone back into slavery.

We should proceed in this trial as we do in other trials, whatever are our sentiments on the subject of slavery. I hope no prosecutor will be found who will abridge the right of personal liberty. If these individuals were actuated by philanthropic motives, these things will be considered by the Court. I enter on my duties with feelings neither elevated nor depressed.

Mr. Merrick exhibited the Writ above-named, dated Sept. 7, 1838, and a bond signed by S. Stratton, S. Foster, and James E. Cheney, and witnessed by Farnum White, Jun.

He then called upon Charles Allen, Esq., who testified, that Samuel Stratton and Elnathan Davis applied for a writ of personal replevin two or three days before date of the writ. They said that Mrs. Eames had in her custody a SLAVE, brought from the South, whom she intended to carry back and sell—they did not like to take the girl by force from Mrs. Eames, but wished to do it in a legal way. He understood from them that the girl desired her liberty. He told them of the legal remedy—had several interviews with them—the writ was made out under his direction, and the bond was written by him, but not executed at his office. Mr. Foster called to see about signing the bond as surety.

Mrs. OLIVIA EAMES being sworn, testified, that she spent the summer of 1838 in Holden and Grafton. Her mother is Mrs. Betsy Sherman of Holden. She, (Mrs. E.) came to New York in 1837, and to Holden in May, 1838. Her husband was Lowell Eames, formerly of Upton. He went to New Orleans in 1835, and died there in 1837. Anne was in her employment as her slave, and all the time, since she left New Orleans, she never knew her to express a wish to leave her, in any instance. Anne often expressed a wish to return to New Orleans. I proposed to leave my babe at the North. Anne wanted to go back—was 14 years old then. I was in Holden at my father's house. Anne's employment was to take care of my child, and to go of errands; went to the neighbors freely, sometimes went with the babe. I was absent from home occasionally; don't keep house; none of the family were at home but my mother, and a brother 10 years old, and a brother 7 years old. Mr. Flagg lived in the house at that time. Mrs. Flagg was at home. I saw Stratton,

Foster, Cheney, White, and Hinds at Judah Wright's first. When F. White passed the house, the girl was in the garden picking apples. Jim Cheney came to the house and went to go where the girl had been, but she had come to the house. I went out to see what they were looking after—did not think it was the black girl. Cheney came to the door and asked for mother—I asked them to sit down—Hinds said that he understood that I had a colored girl in my possession—I said I had—he said that he had come to take her away. I told him I couldnt help it, he couldn't have her. He said he had authority to take her, and read a paper. I told him I didn't know any thing about it—didn't care who authorized him—he had no right to take her. He asked to see her. I told him she was in the back room—went to call her. He followed. I went for her, but she wasn't there. I went up chamber—Anne was out back with my child. Hinds and Jim Cheney were attending to their business the best way they could. I called her in, told her, Mr. Hinds wanted to speak to her—Hinds asked her age, she didn't know—he asked me, but didn't find out—he said to Anne, will you go with me? She said, no. Mr. Hinds patted her on her head—told her he would not hurt her—he woald take her to Worcester—Worcester is a beauiful place. I told him if he took Anne he must take me and the child too. He didn't seem inclined to take us. Cheney went out and came back with Stratton and Foster. You have been out for more help, I said ; if you get more help you will not frighten me. Anne went into the bed-room ; Hinds went in after her, and Jim Cheney next. Anne began to cry—Hinds told her not to be frightened, and like of that—coaxing her. Hinds told me to take the child. I wouldn't take it, and mother wouldn't. Then Mrs. Flagg took it, so he got rid of it. He asked for pen and ink—refused. F. White brought in pen and ink. I took hold of Anne, and Anne took hold of me. Sam Stratton was in the room. Cheney was called back—said they had help enough, but Hinds commanded him to assist. Jim Cheney took hold of me; Hinds took me round the waist. Hinds threw me on the bed. I told them they ought to be in better business—they were insulting—they separated us. Foster and Stratton were trying to hold a pen in Anne's hand to make her make her mark—I don't know nothing what the paper was, and nothing about it. I scrabbled round

and got away from Hinds—Anne was in the road and Stratton had hold of her—I was so flustered that I didn't see Cheney, guess he was about somewhere, Foster was writing on the wall—went to see what he was up to—took hold of the paper and pulled it away from him. He said it was well I didn't tear that paper, I should have had to go to State Prison during my life, if I had—I went back into the house to see my child, and they carried Anne off. Stratton said in the bedroom, well, well, enough has been said, take her along. I didn't see her after they carried her off. Saw her in Grand Jury room, have not seen her since. When at the table, told my brother to run for father and Mr. Putnam. I always lived in Upton till I went to New York six years ago, remained there till 1835.

Examined by Mr. Allen.—Said, Anne went out with other children. There was a school in the neighborhood—she didn't go to school, or to meeting since she came from Louisiana. Her principal work was to nurse the child, and to do other chores, such as I chose to have her do. She sometimes went to Judah Wright's and got a pail of water. We lived at the top of the hill, and Wright down the hill—it wasn't so steep a hill as I have seen—the hill is there and you can see it. She did not bring 10 pails of water in a day—some days, not any, she carried it on her head—I told her to, as she could bring it easier, she was most used to that way—didn't see her spill the water.

Question was then put to Mrs. Eames by Mr. Allen, whether she intended to carry Anne back as a slave. This question was objected to by Mr. Merrick, who remarked—Mrs. Eames has not ventured to say that she was in her voluntary service. Objection was overruled by the Court.

Question by Mr. Allen.—What did you intend to do with her? *Ans.* I did not intend to compel her against her will. I suppose she would tell me what she wished. I never considered her property, after I came to the North---never called her property after I came into this free country. I never made no application to any one in New Orleans to buy her afterwards. I gave no commission about the sale of Anne—I had no negotiations to sell her there, when she returned. If I went back to live in New Orleans, I should keep her—set very much by her—I don't think I said I should carry Anne back. It was my intention to go back

—I don't know that I should have asked her consent to carry her back—can't tell what I should do—should carry her, if she was willing to go—I had no more interest in her than in any other—I always set by her—I never told her she was a slave or free, told her she was to live with sister June, if I did. Her health has not been injured by carrying water and other loads. *I don't recollect saying she would answer my purpose as long as I wanted her.* Mrs. Caldwell said, I had better call a physician and do something for her. I didn't say she would answer long enough for my use, *never*. I did not say that no body ever heard of sending for a doctor for a negro. Hinds took me in full possession. *Scratch?* *Shouldn't think strange if I did.* *Bite?* *They know best if they got bit.*

COL. HINDS called.—I made service of the writ of personal replevin. I think, I took it from my table, Mr. Allen did not furnish me with the form of a return, when I took the writ.

The writ and bond I took together. I went to Mr. Judah Wright's, I think Mr. Cheney went with me to Wright's; neither of the Def'ts was there while I was there. I stopped at the door. I saw the deft's first at Col. Stratton's. Found Stratton, Foster and Cheney there. My partner told me to call there, as there would be sureties there to sign the bond. Bond was not signed there. I told them it was necessary for the girl to sign the bond first. The next I saw Stratton and Foster, they came into the house at Mr. Sherman's. I did not see Anne make her mark to the paper. I saw Foster and Stratton sign their names, one did it out of doors, I am not sure but both. Anne stood in the road close by, when Foster and Cheney signed their names. Anne was pretty much alone. I took the paper. They walked down to Cheney's. Stratton, Foster, and Cheney came there, *no one led her.* She walked independently by herself. I was behind her. There was a carriage at Cheney's. Foster, Stratton and Anne were in the carriage. *I took the paper.* *Asked Anne if she made her mark.* *She said, she did.* *I got Mr. White to witness it.* She sat on the back seat. Would not be seen from the houses as she passed. I did not know where she was going. I told her she was going to Worcester. I told Stratton and Foster, they must take charge of her. I don't recollect making arrangements with Foster and Stratton to take her, before I took her from Mrs. Eames. Mr. Stratton lived 2 1-2 or 3 miles from

there, Mr. Foster 1-2 a mile, or more, farther. They would come past the meeting-house to get to Stratton's. I told Anne at Mrs. Eames's I think, that she was going to Worcester.

Cross Examined.—I directed Mr. Foster and Stratton to take Anne and put her in some safe place, where she would not be taken away or stolen. We went to the house of Mrs. Eames—were invited in—I inquired for Mrs. Eames. Mrs. Eames came. I asked her if she had a colored girl with her. She said she had. I told her I came to take her. She said she did not know what business I had to take her girl. I told her I would show the authority. I read the writ. She said, I might take my writ and go home—I should not have the girl. I told her I was bound to take her and must take her. I must take her at all events. She said she would call her. She did not find her. We walked out and walked round. Cheney went to the back-house door—it was shut. He called ; Anne answered. I told Anne, I had come after her to carry her away. I asked her if she wanted to go. She dropped her head, and said, “I don’t know.” Her mistress spoke and said, “*don’t know, Anne ? you know you don’t want to go.*” Anne made *no reply*. Mistress spoke very quick. I then talked with Mrs. Eames some time, told her to be quiet. If I did what I ought not, she would have a bond to cover all expense. After trying a great while to persuade her to give her up peaceably, the girl went into a small room. I went there—Mrs. Eames followed, and took the girl round with both hands and held her tight. I asked Mrs. Sherman to take the child. She would not, I took the child myself, and Anne let go of it. I stepped into the kitchen. I saw several young ladies, I asked one to take it. She said she did not know as it would answer. I told her I would stand between her and harm. She took it. I stepped back into the little room. Mrs. Eames still stood clinched round the girl. I called upon her to give her up. She refused. I took hold of one of Mrs. Eames’s hands, and Cheney the other. Mrs. Eames resisted violently. She tried to bite and scratch. Our throwing her on to a bed must be a mistake. It must be some other time and person. There might have been a bed in the room, but I think there was not. We were there an hour and a half trying to persuade her. I said every thing I could. *She was very violent the whole time.* I used as little violence as possible to effect the object.

She clinched at the paper once, but did not get hold of it. I was close by, Foster was there with the paper. She was out at the wall, I think, when they signed the paper. I heard no such declaration of Foster at the wall. I heard no such declaration of Mr. Foster at any time as, you would have had to go to State Prison, &c. If such a declaration was made, I must have heard it. I was very close to Foster, when he put his name to the bond. After Anne had left her mistress, she went very willingly—was perfectly composed and calm. She walked down cheerfully, and after she was in the carriage, *she appeared very cheerful.*

I told Mrs. Eames she had better keep the bond as her security. Mr. White took no part whatever in this, except going after ink. I sent Mr. Cheney to get ink somewhere. Mr. Cheney came without the ink-stand, and Mr. White followed with it. That was the first of Mr. White's being at the house. I don't recollect Mr. Foster's meddling at all. He had the paper at the table, that was the first of Mr. Foster's having any thing to do. Besides this, I don't know any thing that Mr. Foster did.

I told Mr. Foster and Cheney and Stratton, it was necessary for them all to sign the bond. Mr. White witnessed the bond, at my request. Anne looked at the paper, and made her mark. I took the paper and asked her if she held the pen and made the cross. I asked her if she did it voluntarily and freely, she replied, she did. I told them I presumed an effort would be made to arrest her, and told them to take care of her. Cheney did not interfere, except by my command. After I told him he must, at first he rather hesitated.

It is my impression that Mrs. Eames repeatedly said, *Anne was her property*, but I cannot certainly testify. It is my impression she did.

ANNE called.—I live with Mr. Edward Earle, in Worcester. I remember Col. Hinds; I went first to Mr. Morey's in Worcester. I did not know where I was going. I came with Mr. Foster and Mr. Stratton. I had seen Mr. Stratton at Mr. Cheney's house. I had never spoken to either of them. I had not seen Mr. Foster before that day. I had been at Mr. Cheney's house alone. It was about a week before I left, I went for butter. I was not there but a little while. They told me the way to Mr. Cheney's house. I came from New Orleans with Mrs. Eames. I had not always lived at New Orleans. I washed dishes and took care

of the child. Went to the village, went for whortleberries, sometimes alone, and sometimes with the children. I was in Grafton at Mr. Reuben Eames's with Mrs. Eames. I used to take care of George. I did not go to the neighbors there. I went with the children to one house in Grafton. I never sent any message or errand to Mr. Foster or Col. Stratton. I never asked any one to ask either of them to do any thing for me. I never told Mrs. Eames I wanted to go away and leave her. I was in the house when Col. Hinds and the other men came. I knew who Mr. Cheney was—not who the other men were. I went out of the room.

I had never put my name or made my mark to paper before that day. There was a paper on the table. The paper was not read to me. Nobody there told me what was in the paper. Foster put a pen into my hand. Told me to mark my name on it. I believe I made a mark on it. I believe, he did help me make the mark. After I left the table, I went into the road. I don't know who told me to go, Mr. Cheney or Mr. Foster. I went to Cheney's house. I believe, Mr. Foster went with me. I believe, Mr. Foster took hold of my hand. I went right to the carriage. Got into it. Mr. Stratton and Mr. Foster went with me. They went to Worcester. When I got there, it was dark.

Cross Examined.—I believe, it was Mr. Foster who had my hand, I am not sure. I went from Virginia to New Orleans. I was employed to carry water from Mr. Wright's—I carried a great many pails of water in a day. My mistress told me to carry them on my head. My mistress told me that I was thirteen while I was at Holden. She said she meant to carry me back to New Orleans again. She said she was going to sell me when she carried me there.

Did you express a wish to have your personal liberty? Objected to by Counsel for Government. Though it was reported to the defendants that she wished her liberty, her mind might have changed.

No person has a right to sue out the writ, unless authorized by the person restrained of his liberty. When a party is restrained of his liberty he is entitled to the writ. No agency can be created but by the act of the principal. *The 15th Section of the law provides that the friends may sue out this writ.* A child cannot have the process because a bond is to be executed. To sue out a writ, unless a person is imprisoned, is an injury to him. Suppose Anne's condi-

tion is not improved. When the bond was given by Anne, it was of no validity.

JUDGE STRONG *decided*.—It is not necessary to meet and settle all the difficulties which may arise under this Statute. I am inclined to the opinion that the Legislature does not mean that any person must have an implied authority—but *the act* is an authority.

ANNE *resumed*.—I expressed a desire to have my liberty before I was taken from Holden. I told Miss White that I wanted to be free. It was Henrietta White. I told Mrs. Warren I wanted to be free. She sits back by the door.

My mistress knocked me across the head with the toasting iron—my mistress lived in Holden, when she struck me with the toasting iron.

JOHN MOREY *called*.—The colored girl came to my house. Mr. Stratton and Mr. Fester brought her there—I did not know which day she was coming—Mr. Stratton and another gentleman told me she was coming. It was two or three days before. After she arrived at my house, Anne was kept up chamber some time. Mr. Stratton thought she would be more contented at my house, than with people who were not of the same color. They wished me to let her go to school—She was kept in my chamber, we were afraid she would be stolen.

[**NOTE**.—The witness is inquired of whether there were threats in the community of a rescue. The question is objected to—and the objection is sustained.]

MR. MOREY *resumed*.—Anne was very well contented at my house. She said she desired her liberty. I was not directed to restrain or seclude her any farther than was necessary for her protection. Col. Stratton and Mr. El Nathaniel Davis offered to pay the expense of her schooling. Col. Stratton was at my house once or twice—cannot tell whether the same person was with him second time or not.

MRS. BETSEY SHERMAN *called*.—I am the mother of Mrs. Eames. Mrs. Eames lived with me at the village and on the hill.

I recollect the time when Anne was put down cellar. She did something worthy of punishment, Mrs. Eames told her to go down cellar. She refused. Mrs. Eames put her down. One or the other hit the toasting iron, and it fell. She made much ado about it.

Before Hinds came to the house, I did not see any other

person. Cheney and Hinds came together. Anne was in the house. She had been after apples. Hinds inquired for Mrs. Eames—I introduced him to Mrs. Eames. They went back into the room. He asked Mrs. Eames if she had a colored girl in her possession. She said she had. He asked, if he could see her. She said he could. He told her, he had come after her. She asked by what authority he came after her girl? *She told Col. Hinds that Anne was as free as any person. If he could get her away by flattering, she was willing he should.* She went out to look for Anne. Anne came in through the kitchen. Hinds asked her if she wanted to go with him. She said NO, sir. He told her, Worcester was a pretty place. She faced the plastering and began to cry. Hinds took the babe. I refused to take it. He carried it to Mrs. Flagg in the other room. He came back and went into the bed-room. Mrs. Eames was there. Perhaps, Cheney was there. She took hold of Anne and Hinds took hold of her. They were all hold of each other, justling. They got Anne up to the table by pushing and pulling along. They were all huddled up together. Mrs. Eames was thrown on a bed in the kitchen. Parmin White brought the inkstand in. I saw Stratton and Foster put the pen into her hand, and take her hand into his, as though they meant her to write. Nobody told what was in the paper in my hearing. They pushed Anne out. Col. Stratton gave me a push back, as I went to the door—left a blue mark on my arm. I went down to the carriage. I saw them as they were going down to the carriage. First, one had her arm, and then the other. I saw a man at the wall, Mr. Foster. He had a paper and pen. Mrs. Eames was not amongst them. I don't know that I saw her at the wall.

Cross Examined.—I don't recollect what Anne had done. Anne made a fuss about it, (the toasting iron.) I think she might be heard at Mrs. White's—I did not go towards the cellar at all. I did not leave my seat. I dont know where I was sitting—I heard the toasting iron fall—All I know about its falling, was, I heard it fall. Mrs. Eames was there when the toasting iron fell. All I know is, the toasting iron fell down cellar and made something of a racket. I cannot swear that Mrs. Eames did not throw the toasting iron down cellar. Anne made some fuss a minute or two, the cellar door was shut. I should not think she was down

cellar over fifteen minutes. I cannot tell the time. I don't recollect about its being said that Mrs. Eames would send for Mr. Sheridan, and he would take the horse-whip to her. This affair was when Mrs. Eames first came to Holden.

I did not like it very much to have people come in as they (the defendants) did. *It excited some hard feelings.* I think Hinds was there an hour and a half. Mrs. Eames and Hinds were standing alone, and Hinds threw her on a bed. At that time, I was not doing any thing. I don't know as Hinds let go of Mrs. Eames after they came out of the bed-room—I cannot say.

GEORGE PUTNAM, a lad, called.—I am son of Le Baron Putnam. When Anne was taken, I was between Wright's and Stratton's. I saw two men hold of her—one hold of each wrist. I was in the road. They did not go by me. They were a little past Mr. Wright's, when I first saw them. I came from home.

Cross Examined.—Charles Drury was with me. Charles got there a little first. I don't know how far I was from Stratton's house. They were *not* dragging her along. I did not see them dragging her. I don't know that I said they were dragging her. I think, she was hanging back a little. I did not notice whether they were walking fast or not. I don't know whether she was hanging back, or whether they were walking fast, and holding her, and she keeping up as well as she could.

THOMAS RANDALL, called.—I was near Mr. Stratton's when Anne went away. I was between Stratton's and Wright's; not more than 2 rods from Stratton's. I saw a person hold of each hand of Anne. I did not know them. I cannot tell who they were. They were this side of Mr. Wright's, between Wright's and Stratton's. I followed down a little way. I did not see them until they got to Cheney's. They had hold of her hands as long as I was there. She was hanging back. I heard nothing said.

Cross Examined.—I do not recollect that I have denied all this statement. I do not recollect that I ever said, she was not hanging back. I don't recollect that I ever said that I had told one story before the grand jury, and I must stick to it. I did not notice particularly, whether they were travelling fast or not. I was from 10 to 15 rods from them. I cannot tell whether I was within 30 rods of them or not. I cannot say whether I was within 40 rods or not of them.

I have mentioned it to Le Barron Putnam. I cannot say whether Putnam was here or not, when Grand Jury met. Two of James Stratton's boys were near me—about a rod off—a rod or two. I was going to Mr. Stratton's—boarded there then, and board there now.

GEORGE PUTNAM called again.—I was at home when I heard something was going on at Sherman's. I was at the top of the hill with the rest of the boys. When I got to the top of the hill, they were beyond Mr. Wright's. I don't know whether I went half way to Mr. Wright's from the top of the hill or not. I don't know whether I walked or ran—I told my father what I saw.

Mrs. OLIVIA EAMES again called.—I never struck Anne with a toasting iron. Anne had committed some little crime. I was going to shut her down cellar. I took her forward of me and in getting her down, the toasting iron fell down. She cried considerably. *Always did* when I punished her.

HENRY BUTTERFIELD called.—It is between 22 and 24 rods from Wright's to Sherman's house. I did not tell Mr. Clifford if I had been present, I should have butchered the officer or run a sword through him. I said if I had been there, and the girl had taken on as I heard she did, I would have died between the gate posts, before she would have gone.

Col. HINDS called again.—It is not true that Mrs. Eames told me that if I could persuade Anne to go away, I might. She repeatedly told Anne *she should not go*, and me, that I should not have her. She told Anne a number of times not to give up the child. She said Anne was as free as any girl. She said she had papers to show to that effect. Refused to show any papers. Said she had them.

Mrs. PATTY CALDWELL called by Deft's.—I live with Judah Wright, my brother. I saw Anne frequently, every day almost, she came for water. She came many times. One day she carried 10 pails full, I counted. Washing days she carried *more*. Carried a great many. It is a very steep hill from my house to Mr. Sherman's. She carried it awhile in her hands as other women do. Then she used frequently to put it on her head. Her back was so weak she did not know how to carry it in her arms. I knew nothing but that the pails were full. I told Mrs. Eames, I thought it would ruin the child. I told her, she must doctor her.

She was diseased. It was plain enough to be discovered. I told Mrs. Eames, I thought it was occasioned by her lifting and working more than her age would bear. Mrs. Eames replied, doctor a negro! She said, it was almost impossible to doctor a negro. She said, she had boiled a sheep's bladder in some milk and giveu her. She said, *she was going to sell her, and she would not be of any use to her much longer.* *She would answer her purpose what little time she wanted her.* *She was going off with her.* Time and again, Anne expressed a great desire that she might be free. Anne said nothing against the family. After Mr. Richardson talked with her, one day she came to me and said, O, Mrs. Caldwell, do you think they will do any thing for me? I heard her say more to my brother Wright. She would often say, *she was a poor slave and must be sold again.* Anne was there with Mrs. Sherman, she brought a little web of linen diaper. I said, is Mrs. Eames going to cut it up for her babe? Mrs. Sherman said, oh no, she is going to make Anne some aprons. She must clothe her until she *sold* her. I said, then the poor girl is going to be sold. *She said, yes.* This was about a week before she went away. After her mother had washed, Mrs. Eames came down and washed a freck, and the conversation I have before stated, took place. She said, *Anne would be no benefit to her now she got so weak.* She said *there would be a fuss, if she kept her here, and therefore she must sell her.* I told Anne I mistrusted there would be a stir made to take her away. I said, she might have her choice. If she told them she wished to stay, she might, and if she told them she wanted to go, I thought she might. She said, *I want to be free, I want to be free.*

I never saw the day when I could carry the water she did. My health always rather poor. I was in Mrs. Sherman's one day. Anne was told to take a bushel basket and get the refuse of the hoop-poles. The girl looked unwilling. Mrs. E. said, I ain't afraid of their hurting you. I did not stay.

I was summoned before the Grand Jury. I was not asked *to go before the jury and tell my story.* I was here two days. I said to Mrs. Eames, it is a hard case to be summoned without any fees, and you had no reason to think I should say any thing in your favor. She replied, *but as it is, it is not so hard as mine, to have all my PROPERTY*

taken away. When they took the girl, they took THE CHIEF OF MY PROPERTY.

I told Mr. Cheney, I pitied the poor girl, for she said they were going to carry her off and sell her, and she wanted to be free. I told him I thought christians could not pass over such things. I told him, she said she wanted relief from some body. Mrs. Warren heard me talk about it with Anne.

*Cross Examined.—*These conversations were all at my brother's house. I did not tell Mrs. Eames that Anne wanted her freedom. I was afraid she would abuse her. The first time I heard Anne speak of the subject, she was at my brother's house, and he asked her where she lived? and she told him. He asked her if she always lived with Mrs Eames? She said no, she was sold to her. He asked her if she was a slave then? She said yes. He asked her if she expected to be? She said she expected to be sold again. He asked if she did not feel bad about being sold? she said she did, but as she must be sold, she had rather go back and be sold at New Orleans, than be a *field slave*, for she understood they fared hard. I cannot say that my brother told her she was free, but *think* he did, at that time. She said, she had been told so before.

*Mrs. JULIA ANN FLAGG called by Defendants.—*I live in the house of Mrs. Sherman. I heard Col. Hinds come in and enquire for Anne. Mrs. Eames called her, came back without her. Told Mr. Hinds if he would be seated, she would call her. She brought her in—Hinds asked Anne, if she wanted to go with him? She seemed frightened and said she "*did not know*." Mrs. Eames said, yes you do know too. Mr. Hinds asked Anne, if she had a shawl and bonnet? She said, she did not know. He asked how old she was. She said she did not know. He asked Mrs. Eames her age. She told him, it was none of his business, she was not so very old. Mrs. Eames told Anne to keep the babe. After Mr. Hinds took it, she told Anne she should not go—not to go. She told Anne to go into the bed room. I was present when they were at the table with Anne. Col. Hinds *did not* throw Mrs. Eames on the bed, Mrs. Eames took hold of Anne, not gently, she hurt her very much, I think. She laid hold of her violently. Mrs. Eames was very angry all the time. Mrs. Sherman was also very angry. Mrs. Eames told Mr. Hinds Anne should not

go, and he should not take her. She did not say any thing to Mr. Hinds about Anne's being at liberty to go if she wanted to, or if he could persuade her to go. Mrs. Eames scratched and bit. Col. Hinds called Mr. Cheney to help. Mrs. Eames told Anne not to sign the paper. She told her mother not to let her sign the paper. Anne went willingly with the men. I saw them down as far as Mr. Wright's. She did not leave back. That day, before Col. Hinds came, Mrs. Eames wanted to know what ailed the nigger, she was so lively ; said, she had always had to drive her to work, but *that day, she hadn't had to speak to her.* Anne did not make a noise or scream, when she went away. She made no disturbance or fuss. Anne was very cheerful that morning, uncommonly so. After Anne had left, more than once Mrs. Eames called Anne to come back, not to go. She did not turn her head round. Before they came, Mrs. Eames told her, she must change her dress and mend the one she wore, as she must wear it back to the South. Mrs. Eames said, *she was going to carry her back to the South, and was going to sell her. Have heard her say it more than once.* She said Mr. Eames paid \$800 for her two years ago, and she would fetch \$1000, now, as she was about two years older. Anne packed up her clothes. Mrs. Eames found them packed up the day before, in two bundles. She came down and told her mother that she had found Anne's clothes tied up, and that, *if it wasn't a nigger, it looked like running away.* I believe she had tied them up the day before. It was that day Mrs. Eames spoke thus.

I heard Mrs. Eames tell Anne that if she ever told any thing out of the house, that happened in it, *she would kill her dead.* Mrs. Eames read in my hearing a letter, I took it to be from New Orleans, informing her that business was dull, that she had better not come back herself, that *she could send Anne, that they had found a place for her, where they could sell her.*

After Anne was taken, Mrs. Eames said, she had fought hard, but not any harder than any one would, *losing their PROPERTY.*

I thought Col. Hinds and those who were with him appeared like gentlemen. Col. Hinds talked long, tried to persuade Mrs. Eames to let her go. He read the bond to Mrs. Eames, she would not hear it.

Cross Examined.—I reside in the house with Mrs. Sherman. I think it likely, I have made communications like these. I told Miss White and Mrs. Caldwell,

At this point in the examination, two witnesses only having been called on the part of the defendants,

MR. MERRICK said,—*I have come to the conclusion that the evidence abundantly justified the issuing of the process, and that the defendants are fully entitled to a verdict of acquittal.* I shall prosecute the case no farther.

The jury immediately gave a verdict of acquittal.

By this sudden termination of the trial, the defendants are deprived of the opportunity of submitting the rest of their evidence. They had a large number of reputable witnesses in attendance, by whom they would have met most fully every fact and circumstance which could be relied upon to show an impropriety of conduct on the part of any, who were concerned in giving freedom to Anne. By several witnesses they would have confirmed the evidence already in the case that the conduct of Col. Hinds and those who were with him, in executing the process of law, was kind and courteous and as mild as the resistance they met with permitted it to be, and in all respects as it should have been—that the witnesses who testified of rudeness to Mrs. Farnes, were in a remarkable error—that Anne was not compelled to sign the bond—was not dragged away as was stated by some of the witnesses—that there was no haste in removing her; that the carriage in which she was conveyed was the one, which was ordinarily used by Col. Stratton—that there was no more concealment of her than was rendered necessary for her protection until a trial should be had, in consequence of threats of violence.

They are prepared to prove further, by various witnesses, the often expressed desire of Anne, that somebody would interfere and prevent her removal, and sale as a slave—the hardships she endured—the knowledge she had joyfully received, that men were coming to release her—her preparation for the event, voluntarily and privately made, without the knowledge of any one—and the pleasure she expressed as soon as she was beyond the view of the eye she had learned to fear, and dared give utterance to her thoughts and feelings. As the trial was arrested, the defendants can give in the form of evidence nothing more than the testi-

mony of Mr. Judah Wright, a man long known by many, and greatly respected for his virtues and intelligence, and for the acquisitions of knowledge which he has made, having never been blessed with sight. Being prevented from attending as a witness, his deposition was taken on the first day of the trial.

DEPOSITION OF JUDAH WRIGHT.

INTERROGATORIES PUT TO JUDAH WRIGHT.

1. Were you acquainted with Anne, a colored girl in the service of Olivia Eames, in Holden, in the summer of 1838? If yes, state what opportunities, if any, you had of conversing with her, how frequently, and where?

2. Did said Anne ever converse with you before she left Holden, respecting any desire she had for personal liberty, or respecting her condition, or her relation to Mrs. Eames? If yes, state what she said at any such conversation, or conversations relative to the above subjects?

3. How near the time of the departure from Holden of Anne, did any of the conversations aforesaid occur, and which?

4. To whom, if any, did you communicate the above conversations, and did you communicate them before the day when said Anne left Holden? [This was objected to by the Counsel for the Government.]

CROSS INTERROGATIONS, BY THE COUNSEL FOR THE GOVERNMENT.

1. If you state any conversations with said Anne, state where and when each of said conversations took place—who was present at each—how each conversation was introduced, and *all* that was said on each particular occasion, both by herself and yourself, and any other person engaged in such conversation.

2. How near did you live to Mr. Sherman in Holden, while Mrs. Eames was there during the season of 1838? and how often, and how many times did you see said Anne during that time, and where?

3. If you state that said Anne had any conversations with you respecting personal liberty, did you take any

measures whatever to ascertain if she was, in fact, under duress, or held in restraint? if so, please state what you did to ascertain the same.

4. If you state that you communicated any conversation had by you with said Anne to any person, please state the name of any and every person to whom you communicated the same; and at what times you did so.

5. Have you now stated the whole of every conversation of which you have given any testimony? if not please state whatever has been omitted.

6. Has any person other than the Magistrate taking your deposition been present during the taking of the same? if so, state the names of all such persons.

MR. WRIGHT'S ANSWERS.

And now the said Judah Wright, being first duly cautioned, examined, and sworn, makes the following answers to the foregoing interrogatories, to wit,

1. To the first interrogatory, this deponent saith, That he was well acquainted with the colored girl, Anne, mentioned in said interrogatory, in the summer of 1838. Mr. Sherman's family, with whom Mrs. Eames and the colored girl lived, resided within about forty rods of me. The well at Mr. Sherman's house became dry, as I understood, and they applied to me for leave to draw water at my well. I gave them leave, and Anne was the principal person employed in drawing water. As the well was situated in the rear of the house, and as they could not get at it without climbing over the fence, I gave them leave to pass through my house. This circumstance led to a particular acquaintance with Anne, as she used to pass through the kitchen into a back room in which I worked making baskets. She passed through there many times every day; on washing days I should think twenty times.

2. To the second interrogatory, this deponent saith, That he did converse with the said Anne, before she left Holden, as to her wishes for her personal liberty. She said she was a slave, from one of the northern slaveholding States, and was carried to the south, and was there sold as a slave to Mr. Eames; and that after Mr. Eames's death she became the property of Mrs. Eames. She often told me that she expected to be sold again; that Mrs. Eames

told her she was going to New Orleans in the fall, and should dispose of her. She said she wished to learn to read, and to attend meeting, but unless she got her liberty she never expected to. She frequently expressed a strong desire to have her liberty, but I never encouraged her to expect it, lest she should take some steps to work her deliverance, and should fail. She used to say that she did not know as there was any way for her to get her liberty ; but if she must be a slave, she hoped she should be sold in New Orleans, or some city, for she had always understood that such slaves fared better than those who were employed in the field. There were a number of these conversations ; frequently through the season. I recollect one conversation in particular, which was on Sunday morning, I think early in September, and at the time when Mr. John Richardson came over to read to me.

3. To the third interrogatory, this deponent answers and saith, That he should think the said conversation, in presence of Mr. Richardson, was not more than a week before said Anne left Holden. She was in at my house after this conversation, but there was nothing in particular said. We had an idea that she was watched. The day before she went away, she was in and bid me good bye, and said she did not know as she should see me again ; she did not know but she should be called for.

4. To the fourth interrogatory, this deponent answers and saith, That he did communicate these conversations to several before Anne left Holden. That he communicated them to Mr. Richardson, Mr. Cheney, Mr. Farnum White, Jr., Henrietta White, and some others. I do not mean to say that I communicated all the conversations to all these persons. I was cautious about it. I only meant to make it understood that the girl wanted her liberty.

1. To the first cross interrogatory, this deponent answers and says, That the said conversations with Anne, all took place at his house. They commenced when she began drawing water there, and he thinks this was in June. The conversations were had frequently, and mostly in his shop, when no one was present. Sometimes his sister was present, and Mr. Richardson was once present, and the deponent does not recollect that any other one was present at any of the conversations. Deponent cannot state how all these con-

versations were introduced; he sometimes introduced them, and sometimes she did. It is impossible to state all these conversations. The tenor of them was that she wanted her liberty, and I sympathised with her. But I did not give her any hope of her deliverance.

2. To the second cross interrogatory, this deponent saith, That he should think he lived in the season of 1838, about forty rods from Mr. Sherman's. He saw the said Anne several times a day generally, and washing days he should think probably as much as twenty times. He never saw her anywhere, than he recollects, but at his house. I use the words *see* and *saw* just as other folks do. What I mean is, I never *met* with her, &c.

3. To the third cross interrogatory, this deponent saith, That it was understood in Holden, that the said Anne was a slave. She said she was a slave. At first I did not know how much she could be relied on, but on acquaintance, I found her intelligence was such, that I thought she could be relied on. The deponent took no further measures to ascertain whether she was under any restraint.

4. To the fourth cross interrogatory, this deponent saith, That he cannot state more particularly than he has already done, to whom he communicated any of his conversations with the said Anne. Nor can he state definitely, at what times such communications were made. There was a good deal said upon the subject, especially within a few weeks of the time when the girl went away; and he thinks it probable that he communicated most of the conversations within that time, but he cannot state positively.

5. To the fifth cross interrogatory, this deponent saith, That he does not suppose that he has stated the whole of each conversation, for it would be impossible for him to do it. He has meant to give a fair general representation.

6. To the sixth cross interrogatory, this deponent saith, That he is blind: he has heard of no one being present, and he presumes no one was present at the time of his giving this deposition, but the magistrate and Mrs. Betsey Stratton.

JUDAH ^{HIS} X WRIGHT.
MARK.

WORCESTER, ss. On the 29th day of January, in the year of our Lord one thousand eight hundred and thirty-nine, the aforesaid deponent was examined, and cautioned, and

sworn, agreeable to law, to the deposition aforesaid, by him subscribed, taken at the request of Samuel Stratton and others, and to be used in an indictment now pending between them and the Commonwealth, before the Court of Common Pleas, and taken upon the interrogatories hereto annexed. The said Judah Wright being unable to attend Court, on account of bodily infirmity, is the cause of taking this deposition.

IRA BARTON, *Justice of the Peace.*

CONSTRUCTION OF THE STATUTE.

In the course of the cross-examination of Anne, (see p. 13,) the following discussion arose upon the construction of the Statute of 1837, ch. 221.

Enquiry was made of the witness by the counsel of the defendants whether she had communicated to any person her desire to be free.

By the counsel for the Government—Unless the communication was made *to* the defendants, the inquiry is irrelevant.

The counsel for the defendants replied, that it was intended to bring the knowledge of the wishes of the witness home to the defendants. The question was still objected to by the counsel for the Government, and an extended argument was entered into respecting the principles of law, which should govern the case. We have not room for all the reasoning and illustrations of counsel, but will briefly state the questions of law which arose.

It was contended by the counsel for the Government, that the defendants could justify the institution of the process of personal replevin only by showing that the girl, Anne, had in some manner requested *them* to aid her in obtaining her liberty. That they could act only as her agents, and under authority previously conferred by her; that although no “express” power of attorney was necessary, in some way it must be proved, that Anne desired and authorized them to interfere; that no subsequent ratification by her of their doings, would be sufficient for the protection of the defendants; and that no justification could be found for their conduct, in the condition of the girl, while under restraint, nor in the benefits, however great, which they may have conferred upon her; that although the defendants, without doubt, believed that the girl was in bondage, and

that they were called upon as philanthropists to assert her rights, yet in law their conduct could not be upheld. The consequences of allowing any other person than the agent of the party principally interested, to institute the process of personal replevin, were urged by way of objection ; particularly, that the individual, in whose favor the suit was commenced, might be subjected to cost, and that the statute of 1837 afforded inadequate protection in this respect. An exception was made, in favor of parents and others, who stood in near relation to the party in duress.

It was replied, by the counsel for the defendants, that they must be acquitted of the crime, alleged in the indictment, if the jury should be satisfied, that the defendants believed, at the time of suing out the aforesaid process, that Anne was held in duress, and that the purpose of the defendants was, to relieve her from unlawful restraint. They were indicted for a conspiracy to deprive Mrs. Eames "*of the voluntary service of Anne;*" and the indictment further charged, that *to effect such object*, that is, the removal of Anne from *voluntary* service, the defendants unlawfully availed themselves of a process of law, adapted to obtain the liberty of one, who was in duress. Should it then appear, that the defendants *believed*, that the girl was unlawfully restrained of her liberty ; and that they instituted the process of personal replevin, *for the purpose* of removing the supposed unlawful restraint upon her person, they must be acquitted of the crime alleged against them. Such must be the result, *although the government should prove, that the girl was a voluntary servant of Mrs. Eames.*

But the defendants were prepared to go further than simply to refute the charge in the indictment, and obtain an acquittal of the crime specifically alleged against them. They vindicated their right to institute the process of replevin ; and they vindicated the statute of 1837, in favor of personal liberty, from the construction given to it by the Counsel for the Government, which would narrow the sphere of its operation, and deprive it of much of its usefulness. The Legislature which passed it, intended that it should be an efficient remedy, for every case of unlawful encroachment upon the right of personal liberty. The individual imprisoned might be an infant, incapable of understanding his rights, and unable to delegate authority. Or it might be, a married woman, who is legally disqualified from instituting a suit at law, is

suffering some great wrong, through deprivation of her liberty, at a distance from her husband and friends. Or, a maniac might be the sufferer. Or, as in the present case, a child brought up in ignorance, and imperfectly discerning her rights, and altogether ignorant of the remedy, might be enduring oppression and bondage. In all such cases the provisions of the Statute would be nugatory, if authority must be given by the person in duress, before the writ can be instituted. Scarcely more effectual would they be for the protection of one who was under no such disqualification. *The injury itself would take away the remedy provided for it. The confinement would deprive the prisoner of the means and opportunity of furnishing the necessary authority.*

So far from admitting the construction contended for, in support of this prosecution, which would render futile a most important and beneficial law, the counsel for the Defendants contend, that it should have such broad operation, that the remedy it held out should meet any possible case of unlawful infringement of personal liberty. If the cry for succor should now be heard from yonder house, and the belief be reasonably had that some human being is there unlawfully deprived of freedom, although that voice of distress should proceed from some unknown person, from the stranger from the "furthest pole," it would be the right of any man who should hear it to institute the writ of personal replevin, and to bring the prisoner and him by whom he was restrained into a Court of Justice, where the cause of the imprisonment could be investigated, and the wrong, if any had been committed, be redressed. Upon any other construction, the Statute, instead of being a protection to men's rights, would be a trap and a snare. In support of his views, the Counsel for the Defendants read and commented upon several sections of the Statute referred to.

The first section provides that if *any person* is unlawfully imprisoned, restrained of liberty or held in duress, such person shall be entitled, of right, to the writ of personal replevin.

That no abuse be made of the law, the 4th and 5th Sections require a bond to be given, with sufficient sureties, for the payment of any damages which the defendant may sustain by reason of the institution of the suit.

The 15th section authorises any person in behalf of an-

other to sue out the writ and prosecute the suit to final judgment, *without any express power* from the person restrained of his liberty.

The 16th section makes provision for the commencement of the suit WHERE THE NAME OF THE PERSON RESTRAINED IS UNKNOWN OR UNKNOWN.

The objection that no adequate provision was made by the Statute for costs to which, under certain circumstances, the plaintiff whose name is used might be subjected, was met by a reference to the provision therein made, for security to the plaintiff as well as the defendant, for costs which might be sustained. It is further urged by the defendant's counsel that objections arising from an omission to provide fully for any injury which might possibly result from the use of the process, in any case which could be suffered to arise, could not avail to defeat the plain enactments of a law. The Legislature of 1837, which passed the law, established a great principle, to wit, the right of a trial by jury in cases affecting personal liberty, and it gave ample means for enforcing the right. It may be, as is often the case, that experience may show the necessity for subsequent Legislation to make perfect the details of the law.

The Court decided that no authority to commence the suit need be given by the person in duress, that the Statute itself was sufficient authority. The objection was therefore overruled, and the evidence was admitted.

NOTE. The writ of personal replevin referred to in this trial was duly entered in Court at the December term of the Common Pleas, and stood on the Docket, **ANNE vs. OLIVIA EAMES.** The defendant appeared by her attorney, but afterwards was defaulted by consent, and judgment for nominal damages (being all that was claimed,) and the costs of Court, was rendered against her. This was proved on trial, but, by mistake, was not inserted in its proper place in this report.

The reader will also observe, that in the testimony of Geo. Putnam and Thomas Randall, on pages 16 and 17, the name of Mr. Stratton was incorrectly introduced instead of that of Mr. Sherman.

~~AN ACT TO RESTORE THE TRIAL BY JURY, ON QUESTIONS OF PERSONAL FREEDOM.~~**AN ACT TO RESTORE THE TRIAL BY JURY, ON QUESTIONS OF PERSONAL FREEDOM.**

SECT. 1. If any person is imprisoned, restrained of his liberty, or held in duress, unless it be in the custody of some public officer of the law, by force of a lawful warrant or other process, civil or criminal, issued by a court of competent jurisdiction, he shall be entitled, as of right, to the writ of personal replevin, and to be thereby delivered in the manner hereinafter provided.

SECT. 2. The writ shall be issued from and returnable to the court of common pleas, for the county in which the plaintiff is confined, and shall be issued fourteen days at least before the return day thereof.

SECT. 3. It shall be directed to the sheriff of the county, or his deputy, or to any of the coroners thereof, and shall be served by either to whom it shall be delivered, without delay.

SECT. 4. The said writ shall be in the form following, viz.

COMMONWEALTH OF MASSACHUSETTS.

—ss. *To the sheriff of our county of — or his deputy, or either of (L. S.) the coroners thereof,* Greeting.

We command you, that justly and without delay, you cause to be replevied C. D. who (as it is said) is taken and detained at —, within our said county, by the duress of G. H., that he the said C. D. may appear at our court of common pleas, next to be holden at —, within our county aforesaid; then and there in our said court to demand right and justice against the said G. H. for the duress and imprisonment aforesaid, and to prosecute his replevin as the law directs:

Provided, the said C. D. shall before his deliverance, give bond to the said G. H., in such sum as you shall judge reasonable, and with two sureties at the least, having sufficient within your county, with condition to appear at our said court to prosecute his replevin against the said G. H., and to have his body there ready to be redelivered, if thereto ordered by the court; and to pay all such damages and costs as shall be then and there awarded against him. Then, and not otherwise, are you to deliver him. And if the said C. D. be by you delivered at any day before the sitting of our said court, you are to summon the said G. H. by serving him with an attested copy of this writ, that he may appear at our said court to answer to the said C. D.

Witness, L. S. Esq. at B—, the — day of — in the year —. A.B. clerk.

SECT. 5. No person shall be delivered from his imprisonment or restraint, by force of such writ, until he shall give bond in the manner expressed in the preceding section; and the bond shall be returned with the writ, in like manner as a bail bond is returned, and shall be left in the clerk's office, to be delivered to the defendant when he shall demand it.

SECT. 6. The officer, who serves the writ, shall be answerable for the insufficiency of the sureties in such bond, in like manner as he is answerable for taking insufficient bail in a civil action.

SECT. 7. If the plaintiff shall maintain his action, and shall make it appear that he was unlawfully imprisoned or restrained, he shall be discharged, and shall recover his costs of suit against the defendant, as well as damages for the said imprisonment and detention.

SECT. 8. If the plaintiff shall not maintain his action, the defendant shall have judgment for his costs of suit, and also for such damages, if any, as he shall have sustained by reason of the replevin.

SECT. 9. If it shall appear that the defendant is bail for the plaintiff, or is entitled to the custody of the plaintiff, as his child, ward, servant, apprentice or otherwise, he shall have judgment for a redelivery of the body of the plaintiff, to be held and disposed of according to law.

SECT. 10. If it shall appear, from the return of the writ of personal replevin, that the defendant has secreted or conveyed away the plaintiff's body, so that the officer cannot deliver him, the court shall, on motion, issue a writ of capias to take the defendant's body, and him safely keep, so that he may be had at the then next term of the court, to traverse the return of the said writ of personal replevin; but the defendant may give, and the officer serving the same shall receive bail, as in civil case, for his appearance as aforesaid, in such sum as the officer may judge reasonable.

SECT. 11. At the term at which the writ of capias is returned, the defendant may deny, by plea, the return on the writ of replevin, and if it shall appear, on the trial thereof, that he is not guilty of secreting or conveying away the plaintiff, as set forth in the return, he shall be discharged and recover his costs.

SECT. 12. If the defendant shall not traverse the said return as aforesaid, or if, upon the said traverse, the issue, on trial, shall be found against him, then an alias writ of capias shall be issued against him, and he shall thereupon be committed to the common jail, there to remain in close custody until he shall produce the body of the plaintiff, or prove him to be dead; and if the defendant shall suggest such death at any time after committal as aforesaid, then the court shall impannel a jury to try the fact, at the expense of the defendant; and if the death be proved, the defendant shall be discharged.

SECT. 13. If, at any time after such return of secretion and conveying away as aforesaid, the defendant shall produce the body of the plaintiff in the court to which the writ of personal replevin was returned, or in which the suit is pending, the court shall deliver the plaintiff from restraint, upon his giving bond agreeably to the condition of the writ of personal replevin; and for want of such bond the plaintiff shall be committed, to abide the judgment on the replevin; and in either case the suit shall be proceeded in, as if the plaintiff had been delivered on the writ of personal replevin.

SECT. 14. Either party may appeal from any judgment upon either of the matters aforesaid to the supreme judicial court, as in common civil actions: and in case of an appeal from the judgments which may be rendered under the writs of capias aforesaid, the whole case shall be carried up to the supreme judicial court and be there disposed of, as it ought to have been in the court of common pleas, if there had been no appeal.

SECT. 15. The writ of personal replevin may be sued out by any person for and in behalf of the plaintiff, and may be prosecuted to final judgment, without any express power for that purpose: *provided*, that the person so appearing for the plaintiff shall, at any time during the pendency of the suit, when required by the court, give security in such manner as the court shall direct, for the payment of all damages and costs that shall be awarded against the plaintiff.

SECT. 16. If the name of the defendant, or the person to be delivered, be unknown or uncertain, then in any writ, proceeding, or process under this act, they may respectively be described and proceeded with.

as is prescribed in the sixth and seventh sections of the one hundred and eleventh chapter of the Revised Statutes, in the writ of habeas corpus.

SECT. 17. The thirty eighth section of the one hundred and eleventh chapter of the Revised Statutes, is hereby repealed. [April 19, 1837.]

THE INDICTMENT.

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER, ss. At a Court of Common Pleas, begun and holden at Worcester, within and for the County of Worcester, on the fourth Monday of September, in the year of our Lord one thousand eight hundred and thirty-eight :

The Jurors for the Commonwealth aforesaid, on their oath present, That Samuel Stratton, Samuel Foster, James E. Cheney, and Farnum White, junior, all of Holden, in the County of Worcester, unlawfully and wrongfully devising and intending to deprive one Olivia Eames of the voluntary service and aid of a certain colored female, named Anne, and to remove the said Anne from the service, care and employment of the said Olivia, into places wholly unknown to said Anne, and without her consent, at Holden aforesaid, in the County aforesaid, on the thirteenth day of September now last past, did, unlawfully and wrongfully, combine, conspire, confederate, and agree together, wrongfully and unlawfully to deprive the said Olivia of the said voluntary aid and service of said Anne, and to remove the said Anne from the service and employment of said Olivia, into places wholly unknown to said Anne, without her consent: and then and there, in pursuance of said conspiracy, combination, and agreement, did unlawfully and without the knowledge or consent of said Anne, cause to be sued out in due form of law, a certain Writ of Personal Replevin in behalf of said Anne, wherein it was alleged that said Anne was restrained and imprisoned by the duress of the said Olivia, which Writ was made returnable to the Court of Common Pleas next to be holden at Worcester, within and for the County of Worcester, on the first Monday of December next: and then and there the same Writ did unlawfully and wrongfully put into the hands of Warner Hinds, without the knowledge or consent of said Anne, to be duly served and executed: and the said Stratton, Cheney, Foster, and White, then and there unlawfully and wrongfully did cause and procure the said Hinds, under color and pretence of making service of said Writ of Personal Replevin in behalf of said Anne, to take the body of the said Anne, by force and violence, without her consent therefor first had and obtained, from the said voluntary service, employment, and care of the said Olivia, and did then and there unlawfully and wrongfully aid and assist the said Hinds in taking the body of said Anne in manner aforesaid: and then and there unlawfully and wrongfully, in manner aforesaid, did deprive said Olivia of said voluntary aid and service of said Anne, and did carry and remove the said Anne into places theretofore to the said Anne wholly unknown: and other wrongs the said Foster, Stratton, Cheney, and White, then and there did, in abuse of the process of law provided for the security of personal freedom, and against the peace of the Commonwealth aforesaid. A true Bill.

SAMUEL DAMAN, *Foreman.*

PLINY MERRICK, *Dist. Attorney.*